

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
NANCY KANE and JOHN FRACCHIA, her husband,

Plaintiffs,

-against-

THE CITY OF ITHACA,

Defendant.

-----X

**NOTICE OF REMOVAL
UNDER 28 U.S.C. § 1441(a):
FEDERAL QUESTION**

Docket No.

3:18-cv-074 (TJM/DEP)

DEFENDANT'S NOTICE OF REMOVAL OF ACTION

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK AND TO *PRO SE* PLAINTIFFS NANCY KANE
AND JOHN FRACCHIA:

PLEASE TAKE NOTICE THAT Defendant City of Ithaca has been named and served as
a defendant in the above-captioned matter. The City of Ithaca now removes the action to this
Court pursuant to 28 U.S.C. §§ 1331 and 1441. In support of this Notice of Removal, the City of
Ithaca shows as follows:

FACTS

1. On January 12, 2018, Plaintiffs served Defendant City of Ithaca (the "City") with
a Summons with Notice in the action entitled *Nancy Kane and John Fracchia, her husband, v.
City of Ithaca*, in New York State Supreme Court Tompkins County, index number 2017-0568
(the "State Action"). A copy of the Summons with Notice, and all other papers filed with the
Tompkins County Clerk of the Court in the State Action, are annexed hereto as **Exhibit 1**.

2. No complaint has been served or filed in the State Action.

OFFICE OF THE
CITY ATTORNEY

Ithaca City Hall
108 East Green Street
Suite 403
Ithaca, NY 14850
(607) 274-6504
FAX (607) 274-6507

3. The Summons with Notice states that the nature of the action is, *inter alia*, for the recovery of damages against Defendant for “violations under the Americans with Disabilities Act, for gender discrimination under Title VII of the Civil Rights Act of 1964, and for failure to provide reasonable accommodation under the Americans with Disabilities Act....” (Ex. 1.)

4. Before commencing the State Action, Plaintiff Nancy Kane filed a charge of discrimination against Defendant with the Equal Employment Opportunity Commission (“EEOC”) alleging violations of the Americans with Disabilities Act (“ADA”) and the Title VII of the Civil Rights Act of 1964 (“Title VII”). The EEOC dismissed the charge on June 23, 2017. Copies of such charge and dismissal are annexed hereto as **Exhibit 2**.

5. Because the Summons with Notice in the State Action asserts claims for violations of federal statutes – the ADA and Title VII – Plaintiffs’ claims present a federal question and jurisdiction in this Court is proper under 28 U.S.C. § 1331. Accordingly, 28 U.S.C. § 1441(a) permits Defendant to remove the State Action to the United States District Court for the Northern District of New York because it is within this Court’s original jurisdiction.

6. This Notice of Removal is timely because it is filed within thirty (30) days of Defendant’s first receipt of the Summons with Notice.

OFFICE OF THE
CITY ATTORNEY

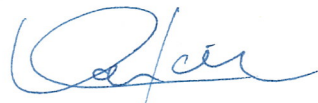
Ithaca City Hall
108 East Green Street
Suite 403
Ithaca, NY 14850
(607) 274-6504
FAX (607) 274-6507

NOTICE TO PLAINTIFF

Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of New York, written notice of such filing will be served on *pro se* Plaintiffs at the address provided in the Plaintiffs' Summons with Notice. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Court for the Supreme Court of the County of Tompkins, New York.

WHEREFORE, having provided notice as required by law, Defendant City of Ithaca hereby removes the aforesaid State Action to this Court under the style shown above.

Dated: Ithaca, New York
January 17, 2018



Kevin Levine, Assistant City Attorney
Counsel for Defendant
City of Ithaca
108 East Green Street
Ithaca, New York 14850
(607) 274-6504

To: Nancy Kane and John Fracchia
Pro se Plaintiffs
2735 Slaterville Road
Brooktondale, New York 14817

U.S District Court Northern District of New York
Clerk of the Court (*via ECF*)

New York State Supreme Court, Tompkins County
Clerk of the Court

OFFICE OF THE
CITY ATTORNEY

Ithaca City Hall
108 East Green Street
Suite 403
Ithaca, NY 14850
(607) 274-6504
FAX (607) 274-6507